

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

January 14, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
OATH OF OFFICE FOR
NEW COMMISSIONERS**

Al Garcia and Zeya Mohsin

Gail Blalock, City Clerk, swore in **Al Garcia and Zeya Mohsin** as members of the Planning Commission. Commissioner Garcia and Commissioner Mohsin then took their place along the Commissioners to become part of the voting body for the agenda items.

**III.
ROLL CALL**

Present: Nitafan, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Duncan, Heyden, Joki, Lindsay and Rodriguez

**IV.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**V.
APPROVAL OF MINUTES
December 10, 2003**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of December 10, 2003.

There were no changes from staff.

Commissioner Lalwani noted that on page 1, the Subcommittee members are not accurate. **James Lindsay, Acting Planning Manager**, replied that the minutes accurately reflect what was said but the Subcommittee rotation had not taken into consideration the new Commissioners and the current agenda is reflective of the change.

Motion to approve the minutes as submitted.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**VI.
ANNOUNCEMENTS**

Mr. Lindsay announced the hiring of a new Senior Planner, Dennis Carrington, who has over 30 years of planning experience and comes directly from the City of Richmond and who also worked for the City of Dublin. Mr. Lindsay welcomed Mr. Carrington to the Planning Division. Mr. Lindsay also referenced the new Subcommittee rotation that was handed out and noted that Commissioner Giordano and Commissioner Sandhu are regular members and Commissioner Lalwani is the alternate. Staff will be announcing the new rotation schedule every three months.

Commissioner Lalwani welcomed the new Commissioners and noted that it is quite historic that this is the first time that the Commission has three women Commissioners that would bring more nurturing to the Commission.

Commissioner Giordano asked Chair Nitafan to follow suit with the City Council and adjourn in memory of Michael Mihalakis, who was killed in Iraq.

Chair Nitafan noted that since Cliff Williams is no longer on the Planning Commission, there is a vacancy for the 50th anniversary committee and he will be taking that position. Chair Nitafan also wished everyone a Happy New Year.

**VII.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda as submitted.

M/S: Giordano/Galang

AYES: 7

NOES: 0

**VIII.
ELECTION OF
OFFICERS (VICE
CHAIR)**

Chair Nitafan opened up nominations for Vice Chair.

Commissioner Sandhu nominated Commissioner Lalwani for Vice Chair and Commissioner Galang seconded the nomination.

Commissioner Lalwani accepted the nomination.

There were no other nominations for Vice Chair so Commissioner Lalwani is now the Vice Chair.

**IX.
CONSENT CALENDAR
Item Nos. 3, 4, 5, 6, 7 and 8**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Lindsay noted a change to the recommendation of Agenda Item No. 2 (Administrative Item No. AD2003-16 – O’toole Elms). Mr. Lindsay explained that staff has received an arborist’s report addressing the current status of the elm trees, which is not good. He explained that KB homes are proposing to construct a public park within the elm growth, and staff is requesting more time to consider the report in conjunction with the proposed land use. The public will be renoticed and the item will be continued to coincide with the KB hearing.

The commission agreed to put Agenda Item No. 2 on consent with the modified recommendation.

Chair Nitafan opened the public hearing on Consent Item Nos. 2, 3, 4, 5, 6 and 7.

There were no speakers from the audience.

**Close Public Hearing on
Item Nos. 3, 4, 5, 6 and 7
and continue Item No. 2 to
no date certain**

Motion to close the public hearing on Item Nos. 3, 4, 5, 6 and 7 and continue Item No. 2 to no date certain.

M/S: Lalwani/Mohsin

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 2, 3, 4, 5, 6, 7 and 8.

- *2 ADMINISTRATIVE ITEM NO. AD2003-16:** Proposed Cultural Resource Site designation of the 'O'Toole Elms located between South Main and South Abel Streets, north of the Main Fire Station (APN: 086-11-013 & 086-11-008). Project Planner: Kim Duncan, (408) 586-3283. *(Recommendation: Continuance to coincide with the public hearing for the KB development)*
- *3 USE PERMIT NO. UP2003-49:** A request to locate a church in the Single Family Residential District at 297 Autrey Street (APN: 026-03-029). Applicant: Living Water Baptist Church. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2358) *(Recommendation: Approval with Conditions)*
- *4 USE PERMIT NO. UP2003-43:** Request to operate a restaurant and bakery without providing 9 required parking spaces located at 273 West Calaveras Boulevard (APN: 022-25-042). Applicant: Harry Kho. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2351) *(Recommendation: Approval with Conditions)*
- *5 USE PERMIT NO. UP2003-47:** Request to operate a cafe, Starbuck's, with 34 indoor and 13 outdoor seats without providing thirteen (13) required parking spaces at 1487 Landess Avenue (APN: 088-35-011). Applicant: Zeden Jones. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2357) *(Recommendation: Approval with Conditions)*
- *6 USE PERMIT NO. UP2003-50:** A request to locate a 72 seat take-out restaurant, including outdoor seating, in the Town Center District (TC) at 70 North Milpitas Boulevard (APN: 028-12-021). Applicant: Panda Restaurant Group. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2359) *(Recommendation: Approval with Conditions)*
- *7 USE PERMIT NO. UP2003-53:** A request to permit an existing legal non-conforming restaurant, Taqueria Las Vegas, with 28 seats (20 indoor and 8 outdoor) with sale of beer and wine at 1417 North Milpitas Boulevard (APN 22-02-009). Applicant: Francisco & Jesus Rodriguez. Project Planner: Staci Pereira, (408) 586-3278. (PJ # 2361) *(Recommendation: Approval with Conditions)*
- *8 S-ZONE APPROVAL AMENDMENT (SA2003-165):** A request to remove 457 young, diseased trees, to be replaced with 368 new trees for a net loss of 89 trees on-site at 400-940 McCarthy Boulevard (APN: 022-29-034 & 035). Applicant: LCM. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with Conditions)*

M/S: Lalwani/Galang

AYES: 7

NOES: 0

**X.
PUBLIC HEARINGS**

Chair Nitafan opened the public hearing on Agenda Item No. 1.

**1. USE PERMIT NO.
UP2003-48 AND
ENVIRONMENTAL
ASSESSMENT NO.
EA2003-12:**

Request to operate a church in three vacant industrial buildings located in the Heavy Industrial zoning district at 995, 1201 and 1225 Montague Expressway.
Applicant: ArcTec, Inc.

James Lindsay, Acting Planning Manager, presented Use Permit No. UP2003-48 and Environmental Assessment No. EA2003-12, a request to operate a church in three vacant industrial buildings located in the Heavy Industrial zoning district at 995, 1201 and 1225 Montague Expressway. Mr. Lindsay recommended approval with conditions and modified condition no. 4 and added condition no. 20 which read as follows:

4. *The applicant shall submit to the city, as and when requested, evidence that a minimum of 2 adult crosswalk guards have been, and will continue to be, posted at the driveway crosswalk during weeknights (30 minutes before peak attendance activities begin and 30 minutes after such events end) as well as Sundays (from 9:30 a.m. to 3:00 p.m.).*
20. *If the city determines any Conditions of Approval are not complied with at the times prescribed, the use permit shall be subject to review by the Planning Commission during a public hearing for possible modifications or possible revocation of approved use permit no. UP2003-48.*

Commissioner Galang noted that in the year 2000, four research buildings were constructed and completed and asked why are they now vacant. Mr. Lindsay explained that the buildings were originally going to be occupied by Cisco Systems, but since the downturn of the economy, the buildings are now for sale.

Commissioner Galang asked why one of the four buildings (Building A) is not included in the proposal. Mr. Lindsay explained that it is his understanding that the church intends on purchasing all four of the buildings and building A would be leased as an office or industrial business.

Commissioner Giordano noted that in the hazardous materials section of the staff report, she wanted to understand the language and impact that it would have near the business park. She noted that in 1996, there was a risk assessment done and read further that there was a materials survey that was submitted in December of 2003. She asked staff to explain the survey.

Mr. Lindsay explained that the Fire department provides the guidelines on which the survey needs to be conducted. The church hired a firm that did site visits and records research within the Fire department to see what types of materials businesses are using in the area and to see what chemicals could be released in the area. The firm also dictated any emergency action items that needed to be addressed and according to the Fire department, the church did do that to their satisfaction.

Commissioner Giordano asked if that process would be done on an annual basis and Mr. Lindsay replied that the same process would occur every year and that the baseline could change every year, so the applicant would have to make the appropriate changes to the satisfaction of the Fire department.

Commissioner Sandhu had a question on condition no. 10 which reads as follows:

10. All roof-top equipment shall be shielded from view in a manner to the approval of the Planning Commission or its designee as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code. Prior to the issuance of any permit for any roof-top equipment which projects above the height of any existing parapet wall or screen, detailed architectural plans for the screening of this equipment and/or a line-of-sight view analysis demonstrating that the equipment will not be visible from surrounding view points shall be reviewed and approved as specified in Section CI-10-42.10-2 of the Milpitas Municipal Code, in order to assure the screening of said equipment is in keeping with and in the interest of good architectural design principles. (P)

Commissioner Sandhu asked if the church will be making changes on the roof top and Mr. Lindsay replied, "No", and noted that this is a standard condition that planning uses on every application. He explained that since the church will be having a cafeteria in the classroom building, condition no. 10 was added as a standard condition, and is applicable because there is a potential to put equipment on the roof, and noted that no exterior modifications are being proposed with this use permit.

Vice Chair Lalwani was concerned that the nearby business uses ammonia, and asked what was the proximity from the church to the building and Mr. Lindsay replied that it is within several hundred feet.

Vice Chair Lalwani noted the concerned letter from WP investments, which included articles from the San Jose Mercury news and the Morgan Hill Times about churches and asked staff if the applicant was given the same material. Mr. Lindsay replied that they would be provided the article.

Commissioner Garcia asked what recourse would the church have if a business was trying to have materials in their buildings, and asked if the church could stop it. Mr. Lindsay replied that any business has a right to use hazardous materials within the business park as long as they comply with fire guidelines and the church would be the one to adjust their activities to any changes within the business environment and it is not the City's intention to restrain or restrict industrial businesses.

Chair Nitafan need clarification on added Condition no. 20 which reads as follows:

20. If the city determines any Conditions of Approval are not complied with at the times prescribed, the use permit shall be subject to review by the Planning Commission during a public hearing for possible modifications or possible revocation of approved use permit no. UP2003-48.

Mr. Lindsay explained that the City has the ability to bring the church back for review if they do not comply with the conditions during the times prescribed.

Chair Nitafan asked if the ammonia is active now and Mr. Lindsay replied, "Yes".

Chair Nitafan asked if staff has a history of any chemicals being released and Mr. Lindsay deferred the question to Patricia Joki, Fire Marshall.

Pati Joki, Fire Marshall, explained that she doesn't know the exact number of releases but that there was a release in 2003. She explained that the engineering safeguards that were in place at the site worked as designed so the release itself was minimized. She also explained that the system was upgraded to meet current code in the summer of 2003.

Chair Nitafan invited the applicant to speak.

Pastor Sean Lee representing Korean Baptist church, 6703 Capri Circle, San Jose, asked for Planning Commission approval of conditional use permit at 995, 1201, and 1225 Montague Expressway for the church. Pastor Lee thanked city staff for their excellent job in reviewing the proposal, analyzing key issues and recommending conditions for the operation. Pastor Lee noted that Korean First Baptist church is a 23-year-old religious institution with a congregation of 1,300 members, including members from Milpitas and from surrounding communities. He noted that it is the largest in the bay area and functions like any other neighborhood church. The church has two sanctuaries for church prayers and religious programs and will be offered on Saturday and Sunday and religious programming will be offered on two weeknights, Wednesday and Friday. Pastor Lee explained that the church is a low intense use that does not impact nearby operations and is very excited about moving to Milpitas as many of the members are city residents and are very supportive of the relocation.

Sean Morley, 99 Almaden Blvd., Real estate advisor for the church, explained that the congregation has outgrown its current facility and felt that the Montague location is the perfect location. He explained that the church meets zoning regulations and is designed for church services and administration. It is typical to that of other churches and the church will not be available to the general public and will not have retail. He noted that staff is minimal during the week and there will be no childcare or schools. The proposed project will not have any effects on the environment and it is important to note that the church is part of an original approval that came to a prior approval for the office buildings, and the concerns that were addressed at that time are similar, if not identical. Mr. Morley explained that the Fire Marshall has addressed issues with the emergency action plan and the church will be able to effectively educate their congregation about the safety plan that will be reviewed on an annual basis, and added that the church will be posting signage and will have crossing guards.

Vice Chair Lalwani asked Mr. Morley if he was aware of the two articles in the paper about churches. Mr. Morley replied, "Yes", and explained that many communities like Milpitas require churches to seek special approval in industrial areas. He explained that in San Jose, there are specific industrial areas that San Jose sets aside for no other uses but office and industrial for economic purposes which are designated pure industrial zones, where school and residential or no other uses are allowed. He explained that in the article, the church wanted to go to a pure industrial area for economic purposes and was not allowed. Therefore, the conditional use for the Korean church does not apply. He explained that Milpitas has many churches that have been approved in industrial areas with a conditional use permit and the church is more concerned about safety than anybody and the church would not have looked at a place that was in harms way.

Chair Nitafan opened the public hearing and asked speakers to fill out their name and address on the designated form at the dais and noted that comments are limited to two minutes and that if the speaker requests more time, they can yield their time to a designated person.

David Denton, WP Investments, 2101 Woodside Road, Woodside, CA, mentioned that he is very supportive of the church but wanted to make sure everyone understands the risks that are associated with putting a church in an industrial location. He explained that he and his partners developed the entire project in 1996 and that there is 9,000 pounds of liquid ammonia in the facility and there have been releases in the past and one in 2003. Mr. Denton also explained his concerns about truck traffic, and noted that 200 trucks go by a day through the main entryway from 6 a.m. to 6 p.m. and that currently, the business park is 35% vacant, so any truck traffic count done today is not at full occupancy. He was concerned that the trucks are not used to seeing families with kids crossing the street and felt that the crossing guards is a great idea but not enough, and felt that any interaction with big trucks and pedestrians is a serious risk.

Steve Normant, Junior High Youth Pastor, 2358 Lucretia Ave., San Jose, stated that he is very excited about having a church in Milpitas and felt it is a wonderful location because it is near the freeway, and will be quick and easy to get to the church. He felt there would be no negative impact to the residential community because the main time is on the weekend and two weeknights, which won't interfere with normal hours of businesses and felt the church would be a very positive impact to the community.

Sam Shin, 2201 Monroe Street, Santa Clara, High School Pastor, is very excited about locating in Milpitas and felt it was beneficial to other businesses around the congregation.

Don Peoples, 344 Springcreek Lane, Milpitas, President of Downtown Association, felt that the City would be a great home for the church and if all things were perfect, the church would have a better location and as long as the church knew the danger, it is a good location for them during the economy situation. Mr. Peoples yielded his two minutes to Mr. Denton.

Mr. Denton went on to explain that toxins are by far the bigger problem and noted that the church is less than 300 yards away where the ammonia leak was. He explained that if there was a release, it would be disastrous for people in the parking lot, and they would not know what to do if a warning alarm went off. He also noted that in 1996, a risk assessment noted the possibility that the wind in Milpitas, blowing from the northwest, would blow any chemical releases in the area.

Marshau Mun, 1925 Barussa Drive, San Ramon, CA, member of the church, works down the street with Seagate and is familiar with safety. He explained that he is certified first aid and that Seagate employees have fire drills, and he is very familiar with the chemicals that are used. He is very excited to move to Milpitas and supports the church.

Ed Connor, 1515 North Milpitas Blvd., noted that the City should put a crosswalk at least 20 feet over the intersection and would recommend an overhead walkway between all three buildings to keep people out of the weather. He explained that he has worked in industrial areas and would not want to have that on his conscious.

Pete McHugh, 654 Los Pinos Avenue, Milpitas, is in support of staff's recommendation for approval of the church. He felt that there are adequate safeguards and the annual update of the monitoring plan gives assurances that it will work. He noted that a similar proposal of a Muslim school in Santa Clara was approved 6 or 7 years ago and the distance between the school and LSI Logic was less than 40 yards and there have been no problems. He noted that it would not be a guarantee but staff is recommending prudent conditions that will assure that there will be no problems. He felt that the church is good for the diversity of Milpitas.

Taks Chang, member of Human Relations County, 765 Edge Lane in Los Altos, mentioned that he is a good friend of Pastor Lee and frequents the church. He is supporting it because the church is the biggest one in the Korean community and he is a strong believer that San Jose is losing and Milpitas is winning.

James Lee, 1118 Corvallis Drive, San Jose, mentioned that Cisco was going to have 500 employees at the site more than 40 hours a week and there was no problem but now that a church wants to go to the site less than 5 days a week, there are concerns. He felt that if Milpitas is concerned about the hazards, they should have taken action with Cisco employees and residences nearby.

Jennifer Kawaski, 979 Erie Circle, noted that she has been living in Milpitas since 1985 and is supporting the church coming to Milpitas and hopes the project will get approved because it will be an asset economically.

Rob Shannon, 450 West Santa Clara Street, yielded his time to Dave Denton.

Regarding Cisco employees versus families with kids, Mr. Denton noted that kids never stay where they are supposed to and do not follow the rules, but it is up to the Commission to decide that. Regarding the conditions in the staff report, Mr. Denton was concerned that the hours of operation were not part of the condition of approval and thought they should be. He also noted that the staff report indicates that the church will take the responsibility for taking whatever protective steps to accommodate future uses of the park, so that their occupancy doesn't result in more restrictive standards on future tenants of the park. Mr. Denton explained that it should be a condition because the church is going to have to react since they are an unusual use going to an industrial park and there are good reasons why cities segregate industrial uses from other places.

Bart Heckman, Attorney representing the applicant, rebutted that Mr. Denton has a poor way of showing his support for the church. He explained that the church is not talking about a situation where patrons are going to be crossing the freeway but will be crossing a driveway. He noted that the conditions include crossing guards and felt that truck drivers can recognize children and won't go tearing into a place where they see children crossing and a lot of people. His example was that all of the children present at the meeting came into the building with no crossing guards. There will not be a traffic issue because the hours of operation of the church are different from other business. Mr. Heckman also noted that the reason why Morgan Hill denied the church use permit was because Morgan Hill felt the church was going to outgrow its parking and the City wanted the church to come up with a permanent parking solution but the church couldn't.

Close Public Hearing

Motion to close the public hearing.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Commissioner Giordano was concerned about liability and asked Attorney Faubion for her input. **Attorney Kit Faubion** explained that the City enjoys a number of exemptions from liability based on the discretionary decisions that are made, but it doesn't mean that the City can never be liable for situations down the way such as extreme negligence or ignoring evidence. The obligation of the Commission is to review the environmental documents that inform the City what the consequences could be. The two main points from the negative declaration were raised and points to keep in mind are to review the document and the findings in the ordinance in the staff report to approve the use permit.

During the public hearing, there were concerns about possible releases and Chair Nitafan asked Ms. Joki to comment. Ms. Joki explained that the ammonia refrigeration is set up as receiver vessels and there is piping that will take the liquefied ammonia throughout the refrigeration room to make sure that it stays cool and comes back to receiver vessels. She noted that the fire and mechanical code was upgraded the past summer, and within the codes there are safeguards and controls and minimum life safety requirements. There are control valves that isolate part of the piping so that if you have a release, it is intended to be mitigated and if you have a substantial release, there is a dump tank that allows the receiver vessels to be placed in a safe state, which is putting a large volume of water that would dissipate the ammonia. She noted further that it doesn't mean there is a guarantee that there will not be a release but it does meet the state code for these kinds of systems. She noted that she can't image a release of the full 9,000 pounds of ammonia but can't say that it would never happen.

Chair Nitafan mentioned the concern about 200 trucks in the area and asked about the proposed safeguards. Mr. Lindsay noted that the traffic analysis was based on the leaseable space that is occupied now which is 35% to 40% vacant and that the traffic surveys were done on weeknight and weekends. He explained that the 1999 study is more reflective of an eventual 90% lease rate of the business park and is expected to have more truck traffic as more tenants come to the park. Staff took the 90% lease rate into consideration when drafting the conditions of approval and felt that the safeguards would be adequate to the pedestrians crossing the road.

Chair Nitafan mentioned his concerns about members following guidelines in case something was to happen and mentioned that he would like to make sure that the applicant has devised training programs and procedures.

In case of an emergency of a possible leak of ammonia, Commissioner Sandhu asked if there would danger to the properties that are near the church. Ms. Joki noted that it would depend on the amount, and of the prevailing winds and how close it is.

Vice Chair Lalwani asked if the church will have internal controls to conduct their own training session and if staff could make it a condition. Mr. Lindsay noted that the church is being required to have an emergency action plan that includes planning for the event of an emergency and training sessions. He noted that the Fire department would make sure that this happens as a result of their annual review and felt that the church will make this happen.

Commissioner Mohsin asked if the speed limit would be enforced. Mr. Lindsay replied that it is private property so the City cannot enforce speed limits in that area. Staff was not concerned about the speed of trucks because most would be coming off on the freeway, merging onto Montague, and shortly turning into the business park.

Commissioner Moshin noted that as members are turning into the driveway, a lot of people would want to park up front. She asked if staff would be restricting parking. Mr. Lindsay noted that the church will own the parcel and the roadway splits the two parcels in half. The sanctuary and the classroom buildings will have more than enough parking.

In case of an ammonia release, Vice Chair Lalwani asked if it is safer to stay inside the building or to get out and leave the building. Ms. Joki said it depends upon the amount of the release. The code requires a shelter in place plan as well as an evacuation in place plan and that is why the incident commander that is in charge will make the determination if they want people to evacuate or shelter in place. The shelter in place plan includes taking care of the people on site to take care of them and house them for a 72-hour period.

Commissioner Sandhu asked if the applicant would be serving food and Mr. Morley replied that the church will have a cafeteria but would be very minimal, unlike a restaurant.

Commissioner Galang asked Pastor Lee if the crosswalk guard services would be there until everyone leaves the facility and Pastor Lee replied, "Yes".

Chair Nitafan asked staff why they do not have the hours of operation as a special condition. Mr. Lindsay replied that staff did not include a restriction on hours intentionally as staff didn't feel it was necessary to regulate the hours and wanted the church to have flexibility with their hours and not to have it come back to the Commission. He did note that revised condition no. 4 does have restrictive hours and reads as follows:

- 4. The applicant shall submit to the city, as and when requested, evidence that a minimum of 2 adult crosswalk guards have been, and will continue to be, posted at the driveway crosswalk during weeknights (30 minutes before peak attendance activities begin and 30 minutes after such events end) as well as Sundays (from 9:30 a.m. to 3:00 p.m.).*

Motion to approve Use Permit No. UP2003-48 and adopt Environmental Assessment No. EA2003-12 with revised condition no. 4 stated above and added condition no. 20 based on the findings and conditions of approval noted in the staff report.

M/S: Galang/Giordano

AYES: 7

NOES: 0

**XI.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:30 p.m. in memory of Michael Mihalakis who was killed in Iraq.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary